IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.162 OF 1996

Mahadeo Yashwant Kamble, Occ. Service, R/o. Tasgaon, District Sangli.) ... Appellant

Versus

State of Maharashtra.) ... Respondent

Ms. S.D. Khot for the appellant.

Smt. V.R. Bhosale, A.P.P. for the State.

CORAM : SMT. RANJANA DESAI, J.

DATE ON WHICH THE JUDGMENT RESERVED : 29TH SEPTEMBER, 2007.

DATE ON WHICH THE JUDGMENT PRONOUNCED : 9TH OCTOBER, 2007.

JUDGMENT:-

1. The appellant (for sake of brevity, “the accused”) was tried in the court of Special Judge, Sangli at Sangli in Special Case No.11 of 1990 for offences punishable under sections 7, 13(1)(d) and 13

(2) of the Prevention of Corruption Act (for short, “the said Act”). By his judgment and order dated 28/2/1996 the learned Special Judge convicted the accused of the offences punishable under section 7 of the said Act and sentenced him to suffer RI for one year and to pay a fine of Rs.5,000/-, in default, to suffer further RI for six months. The accused is also convicted for offences punishable under section 13(1)(d) read with section 13(2) of the said Act and sentenced to suffer RI for one year and to pay a fine of Rs.5,000/-, in default, to suffer RI for further six months. Substantive sentences for both the offences were ordered to run concurrently. Being aggrieved by the said judgment and order, the accused has preferred this appeal.

2. It would be advantageous to begin with the gist of the prosecution story as evident from the complaint filed by the complainant PW-1 Raosaheb Patil and from his evidence. Admittedly in June/July, 1990, the accused was the Circle Officer at Kasbe-Digraj and, as such, he was a public servant. PW-1 is a resident of village Dudhgaon, Taluka Miraj, District Sangli. He

owns a house and an agricultural land at Dughagon. His grandfather Amgonda Patil had a brother by name Bhau. Bhau had a daughter by name Shrimanti. Shrimanti was married to one Nabu Nilkanth Patil from village Samdoli, Taluka Miraj. Shrimanti did not cohabit with her husband. She lived with her father at Dudhgaon.

3. PW-1 Raosaheb's father Shamgonda Patil had a brother by name Balgonda Patil. PW-1 Raosaheb has a brother by name Bhausaheb. Ajit is the son of Balgonda Patil. PW-1 Raosaheb, his brother Bhausaheb and his cousin Ajit do their agricultural work jointly at Dudhagaon.

4. Bhausaheb, the father of Shrimanti died and after his death, Shrimanti started living with PW-1 Raosaheb's father Shamgonda Patil. Shrimanti had inherited acres of land from her father. She made a Will in respect of her property in favour of PW-1 Raosaheb, his brother Bhausaheb and cousin Ajit. The Will was executed on 26/12/1989. Shrimanti died on 13/5/1990.

5. On 14/5/1990, PW-1 Raosaheb, his brother Bhausaheb and his cousin Ajit made an application to the Talathi of Dudhgaon for entering their names in the 7/12 extract of the land of Shrimanti and to get the 7/12 extract. PW-2 Mohammad Soudagar, the Talathi of Dudhagaon took an entry of the Will in the village Form No.6 and issued notices to the concerned persons including the husband of Shrimanti. Shrimanti' shusband took objection for the mutation entry and this objection was entered in Village Form No.6-A by Talathi. According to the prosecution, Talathi of Dudhagaon gave an extract of the said mutation entry to PW-1 Raosaheb and his brother saying that unless the Circle Inspector certifies the entry, he will not be in a position to give any certified copy of 7/12 extract.

6. It is admitted by the accused that at the relevant time, he was working as Circle Inspector in charge of Digraj Circle and village Dudhagaon forms part of the said Digraj Circle.

7. According to PW-1 Raosaheb, on 5/6/1990, he visited the office of the accused at Digraj and made enquiry about his work. According to him, the accused demanded Rs.1,000/- for getting the work done. PW-1 told him that he had only Rs.500/- with him. He paid that amount to the accused and told him that he will give the remaining amount of Rs.500/- later on. He requested the accused to issue an extract of 7/12 record. He then returned to Dudhagaon.

8. The Talathi then issued notices to the concerned parties and within 5-6 days thereafter, on the call of the Talathi, PW-1 Raosaheb and others appeared at Dudhagaon Chawadi. At the instance of Nabu Patil, the husband of Shrimanti, next date was fixed on 27/6/1990 at Kasbe-Digraj. This date was fixed by the accused. The accused asked the parties to remain present before him at Kasbe-Digraj on that day. Accordingly, PW-1 Raosaheb, his brothers and Nabu Patil remained present at Kasbe-Digraj. On 27/6/1990, there was some compromise between PW-1 Raosaheb, his brothers and Nabu Patil. At the request of the parties, the accused fixed the next date i.e. 5/7/1990 at Digraj. It appears that

in the meanwhile, the three brothers paid Rs.40,000/- to Nabu Patil at Samdoli as per the compromise and on receipt of the amount, Nabu Patil gave his no objection to the mutation entry and promised to give his no objection in writing.

9. According to PW-1 Raosaheb, on 5/7/1990, he along with Bhausaheb, Ajit and Nabu Patil went to meet the accused in Digraj office. There Nabu Patil gave in writing to the accused that he has no objection for the mutation in favour of PW-1 Raosaheb and his brothers. According to PW-1 Raosaheb, the accused said that on the next day he would be visiting Dudhagaon and PW-1 Raosaheb and others should see him there. On 6/7/1990 at 3.00 p.m. PW-1 visited Dudhagaon Chawadi. The accused was present there. The accused called PW-1 Raosaheb near him. PW-1 Raosaheb told him that he has brought the remaining amount of Rs.500/- and requested him to accept the same and issue extract of 7/12 record. According to PW-1 Raosaheb, the accused said that he would not do the work for Rs.1,000/-. He demanded Rs.5,000/- from PW-1 Raosaheb saying that Nabu Patil had received Rs.40,000/-. PW-1

Raosaheb requested the accused to settle the matter at lesser amount, but the accused insisted for Rs.5,000/-. At that time, the accused had fractured his leg. He told PW-1 Raosaheb that he would not be coming to village Dudhgaon for 10-12 days. PW-1 Raosaheb then asked the accused for the next date. The accused gave him the next date on 10/7/1990 at Tasgaon. The accused told PW-1 Raosaheb that he would be calling Dudhagaon Talathi at his house at Tasgaon on 10/7/1990. He asked PW-1 to be prepared with Rs.5,000/- and told him that he would give him the 7/12 extract on that day. On 9/7/1990, PW-1 Raosaheb approached the office of the Anti Corruption Bureau at Sangli and lodged the complaint (Ex-26).

10. The evidence of PW-1 Raosaheb, panch witness PW-4 Ramesh Pote and PW-6 PI Shankar Patil show that on 10/7/1990 pancha witnesses were called to the office of the Anti Corruption Bureau. PW-1 Raosaheb was introduced to the panch witnesses and his grievance was narrated to him. Their signatures were obtained on the complaint. Thereafter, PW-1 Raosaheb produced

the amount before the Investigating Officer in the presence of panch witnesses. Then there was demonstration of use of anthracene powder and ultra-violet lamp. The anthracene powder was applied to the currency notes produced by PW-1 Raosaheb. The said currency notes were kept in the pocket of the trouser of PW-1 Raosaheb by one of the staff members. Instructions were then given to PW-1 Raosaheb and panch witnesses by PW-6 PI Patil regarding the trap to be laid for the accused. A detailed pre-trap panchanama was drawn before the raiding party left the office. It is at Ex-23. It was drawn on 10/7/1990 between 8.45 – 11.00 a.m.

11. The raiding party consisting of PW-6 PI Patil, his staff and two panch witnesses and PW-1 Raosaheb left the office of the Anti Corruption Bureau. The evidence of PW-1 Raosaheb, panch witness PW-4 Pote and PW-6 PI Patil indicates that the raiding party then went to Tasgaon by a tempo. At Tasgaon, near Jyotiba Mandir, they stopped the tempo. PW-1 Raosaheb and PW-4 Pote started going towards the house of the accused. There were two

women near the house of the accused. They informed that the accused was not present in the house. They said that the accused had gone to his filed. A boy was then sent to his field. The women said that the accused will return after one and half hour. PW-1 Raosaheb and panch PW-4 Pote waited for the accused. The accused returned on a scooter. He parked the scooter and went to his house. They went inside his house. He had put on a dhoti and a banian. A room outside the house was locked. The accused called for the keys of the room and opened the lock. The accused carried with him a black chained bag from his house. He took PW-1 Raosaheb and PW-4 Pote to the said room (Saraswati Niwas). PW-1 Raosaheb and the accused took their seats on the cot. PW-4 Pote sat on the chair. According to PW-1 Raosaheb, he asked the accused about his work and the accused asked him whether he had brought the amount as demanded by him. PW-1 Raosaheb said that he had brought the amount. The accused asked PW-1 Raosaheb to give the amount. PW-1 Raosaheb then took out the amount from the right side pocket of his trouser with his right hand and handed it over to the accused. The accused accepted it in his

right hand. The accused then counted the money with both his hands and nodded that the amount was correct and then put it in his bag. PW-1 Raosaheb asked the accused that he had already paid Rs.500/- and whether he would return the same. The accused declined to return the said amount. PW-1 Raosaheb asked the accused to give a chit for the Talathi. The accused took out from the bag a register and a ball pen, a piece of paper, etc. The accused started writing the chit. In the meantime, PW-1 Raosaheb asked for water. The accused started getting up, but PW-1 Raosaheb told him that since he had suffered a fracture, he himself will go out and get the water. PW-1 Raosaheb went out through the southern door. According to the panch witness PW-4 Pote, after PW-1 Raosaheb went out, the accused got up and went to the western side window, opened it and asked his house-mates to bring tea and water and again closed the window and sat on the cot. The accused asked PW-4 Pote as to how he was related to PW-1 Raosaheb. PW-4 Pote told him that he was his cousin.

12. According to PW-1 Raosaheb, after going out of the room, as per instructions, he gave signal to the raiding party, which was waiting outside. PW-6 PI Patil and the staff accompanied by the second pancha arrived there. PW-6 PI Patil introduced himself to the accused. On enquiry, the accused told them that he had accepted the amount and kept it in the bag. The hands of the panch witnesses and the hands of the accused were examined in the light of the ultra-violet lamp. No glow was noticed on the hands of the panch witnesses, but a bluish glow was noticed on the hands and fingers of the accused. The handle of the black bag was examined. Bluish glow was noticed on the handle. At the instance of PW-6 PI Patil the accused took out the amount of Rs.5,000/- from his bag and handed it over to the second pancha Naikwadi. Naikwadi tallied the numbers of the currency with the numbers which were noted down in the pre-trap panchnama and confirmed that the numbers tallied. The said currency notes were then kept in an envelope and the envelope was then sealed with the signatures of panch witnesses and the same was attached. PW-6 PI Patil in his evidence has stated that the amount of

Rs.5,000/- which was taken out from the bag by the accused was examined in the light of ultra-violet lamp. Bluish glow was seen on all the currency notes. PW-1 Raosaheb was then called in. His hands were checked in the light of ultra-violet lamp. Bluish glow was seen on his right hand palm and fingers. Post-trap panchnama (Ex-53) was drawn. A list of numbers of currency notes was prepared. It is at Ex-53A. Thereafter, the raiding party returned to the office of the Anti Corruption Bureau at Sangli.

13. The panch witnesses were again called to the office of the Anti Corruption Bureau on the next day. The investigating Officer along with panch witness visited Kasbe-Digraj Chawadi on the next day. The accused was present there. He unlocked the cup-board in the Chawadi. PW-6 PI Patil seized some of the relevant documents under panchanama (Ex-54). The said documents are at Ex-27, Ex-31 to Ex-49.

14. On 11/7/1990, the Investigating Officer lodged a complaint against the accused and the offences came to be recorded as

aforesaid vide C.R. No.168 of 1990. After completion of investigation and after obtaining the sanction, the accused came to be charged as aforesaid.

15. In support of its case, the prosecution examined as many as six witnesses. The star witness of the prosecution is PW-1 Raosaheb. The prosecution also examined the Talathi PW-2 Mohammad Soudagar, panch witness PW-4 Pote and PW-6 PI Patil.

16. The accused denied the case. According to him, at Dudhagaon, in order to assist the Talathi, he had certified 38 mutation entries out of 42 pending mutation entries because notices were served and there was no objection to the said entries. So far as mutation entry No.5039 is concerned, it was on the basis of a Will. He directed the Talathi to fix the date for hearing of the objections. Accordingly, date of hearing was fixed on 21/6/1990. On 21/6/1990, the Talathi, Dudhagaon saw him at Digraj and informed him that PW-1 Raosaheb had applied for adjournment.

The Talathi showed him the application. Accordingly, he asked the Talathi to fix the date on 27/6/1990. He then came to Sangli to attend the camp of the revenue staff held in the Collector Office, Sangli on 21/6/1990 and 22/6/1990. In that camp, all the Tahasildars, Naib Tahasildars, Circle Officers and Talathies in the district were present. Instructions were given to them that the entries of mutation on the basis of Will should not be certified except on production of probate. He, therefore, informed the concerned person that the Will maker had died on 13/5/1990 and the application for mutation was made on 14/5/1990 and, therefore, there was reason for suspicion. He told them that the entry should not be certified without a probate. PW-1 Raosaheb and others then asked for next date. He fixed the next date as 5/7/1990 at Kasabe-Digraj.

17. According to the accused, on 5/7/1990, the persons concerned with the entry No.5039 appeared before him at Kasabe-Digraj. They insisted that he should record statement on that day. He told them that he had already instructed them to produce

probate from the court. They told him that they had arrived at a compromise and asked him to certify the mutation entry. He told them that prior to 27/6/1990, he had met with an accident and had sustained injury to his leg. Because of the pain which he was experiencing due to the fracture he asked them to have the matter fixed on the next date. According to him on 5/7/1990, he recorded the statement of the concerned persons. He then handed over the papers to the Talathi and left for Miraj to attend the meeting in the Tehsil office which was fixed on 5/7/1990. He had already received order from the Tahasildar to remain present at Mouje Digraj on 6/7/1990 for the matter of handing over possession and partition. According to him, in the meeting dated 5/7/1990, the Tahasildar orally asked him to remain present in the Sangli Chavadi on 6/7/1990 for the said work. On 3/7/1990, he went to Dr. Ashok Nivrutti Tasgaonkar for examination of his fractured leg. Dr. Tasgaonkar asked him to take treatment of Dr. Kothari, Orthopedic Surgeon. Accordingly, he went to Dr. Kothari at Sangli. Dr. Kothari examined him and told him that he needed plaster. Dr. Kothari issued a certificate to him. On 6/7/1990, he again got

himself examined in the Civil Hospital at Sangli. He then reported at Sangli Chavadi at about 12.00 noon to 1.00 p.m. on 6/7/1990.

18. According to him, at Sangli Chawadi, the Tahasildar told him that the work about the partition and delivery of possession at Mouje Digraj would not be done on that day. He, therefore, left Sangli at about 1.30 p.m. and went to Dr. Tasgaonkar. On 7/7/1990, Dr. Tasgaonkar put plaster on his leg. He then returned to Tasgaon on 7/7/1990. Dr. Tasgaonkar issued certificate on 7/7/1990 and asked him to take rest. According to the accused, on 9/7/1990, he was at Tasgaon. On that day, he sent an application for leave for the period from 9/7/1990 to 8/8/1990 to the Tahasildar Miraj through his son. On 9/7/1990, there was a death anniversary of his father. He had been to his field. On that day, his guests stayed in his field. Some of them stayed in his house. On 10/7/1990 the food was cooked in the field for the death anniversary. At about 1.00 p.m. to 1.30 p.m. his son came to the field and told him that his wife had sent a message that two persons had come to see him. He, therefore, returned with his son

on scooter. He parked the scooter near Jyotiba Temple. From there, he walked to his house. He came out of the house with a dhoti and a banian on his person. PW-1 Raosaheb and the other person came to him. They told him that they had some work with him and they wanted to talk to him. Saraswati Niwas was locked. He asked his daughter-in-law to open the lock. There were guests in the house and, therefore, they decided to sit in Saraswati Niwas. All of them went there.

19. According to the accused, PW-1 Raosaheb sat on the cot and his companion sat on the chair inside the room. He asked PW-1 Raosaheb as to who was the person seating in the chair. PW-1 Raosaheb told him that that person was his cousin. He got up from the cot and opened the western side window and called his wife and asked her to bring tea and water. After having tea and water, PW-1 Raosaheb got up saying that he would return soon. He went out. Within 5-10 minutes after PW-1 Raosaheb had gone with Mokashi, PW-6 PI Patil, PW-1 Raosaheb and other staff entered the room. PW-6 PI Patil introduced himself to him and told

him that he had just accepted and received money. According to the accused, he was frightened and he started looking here and there. Then PW-6 PI Patil asked him to take out the money. According to the accused, he then opened the chain of the bag. There were some papers in the bag. He took out from the bag a barnishi, a diary, some circulars, medical papers, copy of leave application, etc. After he took out his articles, he noticed that there was some money in the inner pocket of his bag. He gave it to PW-6 PI Patil. PW-6 PI Patil then went to the southern side of the room with his staff. The accused remained with a lady constable and one or two staff members in the northern side of the room. He asked the constable to open the northern side door of the room as he wanted to go to the urinal. The constable opened that door and he went to the urinal and came back. His daughter-in-law then brought tea. All of them had tea. PW-6 PI Patil told him in the presence of Mokashi that he wanted the papers about the mutation entry of PW-1 Raosaheb. He asked him to remain present in his office at 11.00 a.m. on the next day.

20. According to the accused, on the next day at 11.00 a.m., he reported in the office of the Anti Corruption Bureau at Sangli. Then he, PW-6 PI Patil and his staff went to Kasabe-Digraj by a private van. In his office at Kasabe-Digraj, PW-6 PI Patil handed over the keys to him. The accused opened the cup-board and showed all the papers to PW-6 PI Patil. According to the accused, the papers of PW-1 Raosaheb's mutation entry were not in the cup-board. When he was asked as to where the papers were, he told PW-6 PI Patil that they were with Dudhagaon Talathi. He had then sent a man to Dudhagaon Tahasildar and called for the record. Accordingly, the Talathi came there with the record of 7/12 mutation book and other papers regarding entry No.5039. PW-6 PI Patil took them in custody. Panchanama was then drawn. The accused was then asked to go. He was then asked to remain present in the guest house at Sangli on 16/7/1990. Accordingly, he remained present there on 16/7/1990. In short, it is the case of the accused that because he had insisted on the production of probate from PW-1 Raosaheb, PW-1 Raosaheb has falsely implicated him in this case. Money was planted in his bag.

21. After perusing the evidence on record, the learned Special Judge came to the conclusion that the prosecution had proved its case beyond reasonable doubt. He, therefore, convicted the accused as aforesaid. Hence, this appeal by the accused.

22. I have heard, at some length, Ms. Khot, the learned counsel appearing for the appellant-accused and Smt. Bhosale, the learned A.P.P. appearing for the State. With the assistance of the learned counsel, I have gone through the evidence and the record of the case.

23. Ms. Khot, the learned counsel appearing for the appellant submitted that the learned Special Judge erred in convicting the accused. She submitted that there is enough indication in the evidence that the prosecution story is concocted and the accused is sought to be implicated at the instance of one Mokashi, who had an axe to grind against the accused.

24. Ms. Khot submitted that there is no corroboration to the alleged first demand dated 5/6/1991. The prosecution has not examined the brothers of PW-1 Raosaheb. Similarly for the second demand dated 6/7/1990 also, there is no independent corroboration. PW-2 Soudagar, the Talathi does not speak about it. Therefore the second demand is also not proved. It is risky to hold that these demands are proved only on the basis of the evidence of PW-1 Raosaheb whose evidence is in the nature of evidence of an accomplice. Ms. Khot submitted that once prior demands are not established the court has to be careful while accepting the evidence relating to the alleged trap. A different approach is necessary in such a case. The evidence pertaining to the trap has to be carefully evaluated and if there are discrepancies, it has to be rejected. In this connection, the learned counsel heavily relied on the judgment of this court in ***Tryambak Lilaji Binnar v. State of Maharashtra, 2002 Cri. L.J. 3059***.

25. Ms. Khot submitted that if the prior demands are not proved, the entire prosecution story becomes suspect. Possibility of

concoction cannot be ruled out.

26. Ms. Khot pointed out that M.A. No.4, the Register which is maintained by the office to keep record of the movements of the accused is held to be not proved. Thereafter, the presence of the accused at Chavdi on 6/7/1990 is not proved.

27. Ms. Khot pointed out that PW-1 Raosaheb has stated that on 9/7/1990, he arrived in the office of the Anti Corruption Bureau for lodging complaint at about 3.30 p.m. or 4.00 p.m. The writing of complaint was over by 7.00 p.m. She pointed out that PW-4 Pote has stated that on 9/7/1990 at about 4.30 p.m. or 5.00 p.m. his superior told him that he had to remain present in the office of the Anti Corruption Bureau, Sangli at 7.30 p.m. Ms. Khot submitted that if the recording of the complaint was completed at 7.00 p.m., PW-4 Pote could not have been told at 4.30 p.m. that he had to go to the office of Anti Corruption Bureau, Sangli to assist in government work. Ms. Khot submitted that this indicates that the complaint is false.

28. Ms. Khot pointed out that PW-1 Raosaheb has stated that the complaint was lodged as per the details given by Mokashi. The prosecution has failed to examine Mokashi. Therefore, adverse inference must be drawn against the prosecution.

29. Ms. Khot submitted that PW-1 Raosaheb has stated that he had borrowed money from people to give bribe to the accused. However, the prosecution has failed to examine those persons. This case of the prosecution is, therefore, not substantiated.

30. The learned counsel drew my attention to the evidence of PW-1 Raosaheb to the effect that before leaving for the trap the raiding party was told that in any case the raid should be successful. Ms. Khot submitted that therefore the prosecution was interested in somehow implicating the accused. This statement made by PW-1 Raosaheb, argues Ms. Khot, strengthens the case of the accused that money was thrust in his bag.

31. Ms. Khot then submitted that PW-1 Raosaheb has stated in his evidence that he was stating for the first time in court that he had asked Kamble about 7/12 extract. She submitted that application dated 14/5/1990 (Ex-27) is not for certified copy of 7/12 extract. It contains a request that village record be corrected by making entry as per registered Will. Therefore, there is no question of the accused issuing 7/12 extract. Basis of the prosecution story has, therefore, given way.

32. Ms. Khot pointed out that PW-4 Pote has stated that when he read complaint (Ex-26), he did not find the averment that PW-1 Raosaheb was called by the accused at 11.30 a.m. on 10/7/1990. Therefore, this line appears to have been added afterwords. FIR is, therefore, a tampered document.

33. Ms. Khot then submitted that PW-4 Pote has stated in his evidence that his superior officer did not issue any order in writing directing him to remain present in the ACB office. There is no requisition on record and, therefore, it is doubtful whether PW-4

Pote was at all summoned.

34. Ms. Khot further contended that the prosecution story is that the accused was writing a note to the Talathi on a piece of paper. However, it is not clear on which portion of the chit anthracene powder was located. Similarly, there is no marking on the bag which the accused is said to have opened to indicate on which part of the bag anthracene powder was found. The bag and piece of paper should have been sent to the Chemical Analyser. That not having been done, the prosecution story has become suspect.

35. Ms. Khot submitted that the prosecution has failed to establish its case beyond reasonable doubt. In any event, the defence has probabalised its case that the money was thrust in the bag of the accused when he rose from his seat and went to the window to order tea. Ms. Khot submitted that assuming that money was recovered from the bag of the accused, mere finding of money is not sufficient to hold the accused guilty of the offence of accepting illegal gratification. There has to be independent

corroboration to the evidence of the complainant and, the prior demands must also be proved. The evidence adduced by the prosecution must inspire confidence. She submitted that in this case, the prosecution evidence is replete with discrepancies and, hence, the accused deserves to be acquitted. In support of her submission, Ms. Khot relied on the judgment of this court in ***Pandharinath Shelke v. State of Maharashtra, 2005 (2) BCR (Cri.) 940***.

36. Mrs. Bhosale, the learned A.P.P. on the other hand submitted that the prosecution has proved its case beyond reasonable doubt. She submitted that there is no doubt about the fact that the accused was dealing with the case of PW-1 Raosaheb. He has admitted his presence. Money was recovered from his bag. The currency notes and the hands of the accused were found stained with anthracene powder. The explanation offered by the accused does not inspire confidence. The accused has not led any evidence to probabalise his defence. He has failed to probabalise his defence. Relevant documents were found to be in his custody.

Ms. Bhosale submitted that evidence of PW-1 Raosaheb is reliable. It is supported by the evidence of PW-2 Soudagar, the Talathi and PW-4 Pote, the pancha witness. Minor discrepancies found in their evidence do not affect the prosecution story. Ms. Bhosale submitted that the accused has not made out any case for setting aside the order of conviction and sentence. In support of her submissions, Ms. Bhosale relied on the judgment of the Supreme Court in ***Sarupchand v. State of Punjab, AIR 1987 SC 1441, State of Gujrat v. Raghunath Baxi, AIR 1985 SC 1092, Shri Durga Dass v. State of H.P. AIR 1973 SC 1379 and Kishanchand Mangal v. State of Rajasthan, AIR 1982 SC 1511***.

37. There is no dispute about the fact that the accused was holding the post of Circle Officer, Digraj Circle at the relevant time and Dudhgaon came under his jurisdiction. Case of the prosecution is that Shrimantibai had made a Will dated 26/12/1989 and bequeathed her lands to PW-1 Raosaheb, Bhausaheb and Ajit. According to PW-1 Raosaheb, after death of Shrimantibai, he gave application (Ex-27) to the Talathi to enter their names in the

7/12 record of Shrimantibai. He has stated that the Talathi told him that unless Circle Inspector certifies the entry, he would not give certified extract of 7/12 entry. PW-1 Raosaheb has further stated that on 5/6/1990 he visited the office of the accused. He requested the accused to issue extract of 7/12 patrak. The accused asked for Rs.1000/-. He gave him Rs.500/- and told him that the remaining amount would be paid later on. PW-1 Raosaheb has further stated that on 6/7/1990, he along with others went to Dudhgaon Chavdi to meet the accused. He told the accused that he had brought the remaining amount of Rs.500/-. He requested the accused to accept it and issue extract of 7/12 patrak. The accused demanded Rs.5,000/-.

38. Application dated 14/5/1990 (Ex-27) states how Shrimantibai in her Will had partitioned her property and bequeathed it to PW-1 Raosaheb, Bhausaheb and Ajit. It contains a prayer that the record be corrected by making entry as per registered Will of Shrimantibai.

39. PW-2 Soudagar has supported this part of the prosecution story. He has stated that after the death of Shrimantibai an application accompanied by the Will of Shrimantibai and her death certificate was submitted to him and a request was made that names of PW-1 Raosaheb, Bhausaheb and Ajit be entered in the revenue record. He has stated that he took the entry of the Will in Village Form No.8. He has stated that the three brothers told him that he should issue 7/12 extract with permanent entry and he told them that he could only issue 7/12 extract if the mutation is certified by the Circle Inspector.

40. Ms. Khot pointed out a stray sentence in the cross-examination of PW-1 Raosaheb that he was stating for the first time in the court that he had asked the accused for 7/12 extract. She submitted that application (Ex-27) is only for entering the names of the three brothers in the Record of Rights and therefore the story that PW-1 Raosaheb asked for certified extract from the accused is false.

41. It is not possible to accept this submission. Though the application contains a request for entry of the names of the three brothers in the revenue record, PW-1 Raosaheb has categorically stated that he had asked the Talathi to issue extract and after Talathi told him that Circle Inspector has to certify it he had on 5/6/1990 and 6/7/1990 requested the accused to issue the extract. PW-1 Raosaheb and PW-2 Soudagar establish this case of the prosecution. Besides the accused has admitted in his statement that the said mutation entry was pending before him and that the parties had asked him to certify the mutation entry.

42. Submission of Ms. Khot based on the stray sentence found in the cross-examination of PW-1 Raosaheb that he was stating first time in the court that he had asked the accused about 7/12 extract must fail. The prosecution has successfully established that PW-1 Raosaheb had requested the accused to issue certified 7/12 extract.

43. There can be no dispute about the proposition that generally

there should be corroboration to the evidence of the complainant in cases where the accused are faced with corruption charges. It is also true that if the prosecution fails to prove prior demands, the evidence relating to the trap may have to be scrutinized carefully. Reliance placed by Ms. Khot on the judgments of this court in ***Tryambak Binnar's case (supra) and on Pandharinath Shelke's case (supra)*** is apt.

44. However, though in the present case, the prosecution has not examined the brothers of PW-1 Raosaheb to prove prior demands, I am not inclined to hold that the prior demands are not proved. I have already discussed the evidence of PW-1 Raosaheb. It is supported by Ex-27 the application filed by the three brothers for entering their names in the revenue record. The Will of Shrimantibai was annexed to it. PW-2 Soudagar' sevidence corroborates PW-1 Raosaheb about the making of this application and the demand of the three brothers for certified extract. PW-1 Raosaheb's evidence has a ring of truth. The fact that the accused initially made a demand for Rs.1000/- and after the three brothers

settled the dispute with Nabu Patil at Rs.40,000/-, raised the demand to Rs.5,000/- appears to be very natural. Besides the accused has admitted that this mutation entry was pending before him. He has admitted that PW-1 Raosaheb and others met him. Against this background, there is no reason to disbelieve PW-1 Raosaheb as regards the prior demands. It cannot be said that the prior demands are not supported by any evidence. There are enough tell-tale circumstances on record to hold that prior demands are established. This submission of Ms. Khot is, therefore, rejected.

45. So far as the trap and finding of money in the bag of the accused is concerned, it is established by the cogent and consistent evidence of PW-1 Raosaheb, PW-4 Pote and PW-6 PI Patil. I have already referred to the gist of the evidence of PW-1 Raosaheb and PW-4 Pote. I find their evidence consistent and credit-worthy. The minor discrepancies to which my attention is drawn by Ms. Khot are totally inconsequential and they do not affect the substratum of the prosecution story. I also find evidence

of PW-6 PI Patil to be cogent and satisfactory. It is not necessary to discard it on the ground that being the investigating officer, he is interested in the outcome of the case and, therefore, he cannot be relied upon. In this connection, it is necessary to refer to the judgment of the Supreme Court in ***State of Gujrat v. Raghunath (supra)*** on which reliance is placed by Ms. Bhosale, the learned A.P.P. In that case, the accused was an Income-tax Officer. A notice was issued to PW-7 Sheth, who was representing M/s. Hind Fertilizers why certain amount should not be added to their returns. PW-2 Shahi Kant the Managing Partner of the firm went to the house of the accused as directed by the accused. The accused demanded bribe. He lodged a complaint. Trap was laid. Trap was successful. The accused was sent up for trial. The trial court convicted the accused. But the High Court acquitted him on the ground that no independent witnesses were examined by the prosecution. It was observed that pancha witnesses were government servants and, therefore, cannot be relied upon. The Supreme Court while setting aside the order of acquittal observed that the High Court had done great injustice to the witnesses. The

Supreme Court observed that while appreciating oral evidence, the question in each case is whether the witness is a truthful witness and whether there is anything to doubt about his veracity in any particular matter about which he deposes. The Supreme Court further went on to observe that it would be wrong to reject the evidence of police officers on the mere ground that they are interested in the success of the prosecution. The Supreme Court further observed that the court may be justified in looking with suspicion upon the evidence of officers who have been demonstrated to have displayed excess zeal in the conduct and success of the prosecution. But to reject the evidence of all official witnesses is going too far and it is extremely unfair to a witness to reject his evidence by merely giving him a label. In my opinion, these observations are applicable to this case. Here the evidence of PW-6 PI Patil is so consistent that it would be unfair to stamp him as an interested witness and ignore his evidence.

46. Ms. Khot pointed out that PW-1 Raosaheb has said that when the members of the raiding party left for the trap, they were

told that in any case the raid should be successful and, therefore, it must be inferred that the prosecution was interested in somehow implicating the accused. I am unable to accept this submission. There is nothing wrong in the officer telling the raiding party that the trap must not fail. In fact, it is the duty of a good investigating agency to ensure that the trap is laid properly and it is successful. From this, it cannot be inferred that the investigating agency was overzealous. Nothing has been brought on record to show that investigating agency acted as a persecutor or that it manipulated the record or examined bogus witnesses. This submission of Ms. Khot is, therefore, rejected.

47. It is significant to note that after the trap on the next day, the investigating officer accompanied by pancha witnesses went to Kasbe Digraj Chavadi. The accused was present there. He unlocked the cub-board in the Chavadi. PW-6 PI Patil seized relevant documents under panchnama (Ex-54). The documents attached under the panchnama are at Ex-27 and Ex-31 to Ex-49. These documents include application made by the three brothers

for mutation and other documents pertaining to Shrimantibai's land. Evidence of PW-4 Pote and PW-6 PI Patil has established this fact. The accused was, therefore, very much concerned with PW-1 Raosaheb's application.

48. Ms. Khot's argument that the prosecution is a motivated prosecution and one Mokashi is behind it and that since the prosecution has not examined Mokashi, adverse inference needs to be drawn against it, must be rejected. Assuming that PW-1 Raosaheb took the help of one Mokashi, it cannot be inferred from this that Mokashi was instrumental in initiating false prosecution against the accused. The accused has not brought any circumstances on record to substantiate this argument. I, therefore, find no substance in this argument.

49. Ms. Khot's submission that because Register M.A. No.4 is not proved, the presence of the accused at Chavdi on 6/7/1990 is not proved has no merit. Even if M.A. No.4 is kept out of consideration, the presence of the accused at the Chavadi on

6/7/1990 can be held to be proved on the basis of the evidence of PW-1 Raosaheb.

50. Ms. Khot also tried to rely upon some discrepancy as regards time in the evidence of PW-1 Raosaheb and PW-4 Pote. She submitted that according to PW-1 Raosaheb, recording of his complaint was over by 7.00 p.m. on 9/7/1990. However, PW-4 Pote has stated that on 9/7/1990 at about 4.30 p.m., he was told to remain present in the office of the Anti Corruption Bureau. This submission is without any substance. Witnesses often commit mistakes in their estimate of time. That does not always make them unreliable. In any case, in this case, it is quite possible that when the nature of the complaint became clear PW-4 Pote was summoned. Nothing really turns on this minor discrepancy. This submission is, therefore, rejected.

51. I am also not impressed by the submission of Ms. Khot that the prosecution should have examined the persons from whom PW-1 Raosaheb borrowed money. The fact of the matter is that

after successful trap, money was recovered from the bag of the accused. This fact is established by cogent evidence. PW-1 Raosaheb and his brothers are not paupers. They had settled their dispute with Nabu Patil by giving him Rs.40,000/-. Therefore, they obviously had the capacity to pay or borrow money and pay. In the facts of this case, therefore, non-examination of the persons from whom PW-1 Raosaheb is said to have borrowed money does not adversely affect the prosecution case.

52. Ms. Khot urged that there is tampering of FIR because PW-4 Pote has stated that when he read the FIR, he did not find the averment that the accused had called PW-1 Raosaheb at 11.30 p.m. on 10/7/1990. In my opinion, not much can be made of this statement. It is possible that PW-4 Pote's memory did not serve him well when he was asked this question. From this, it cannot be inferred that FIR was tampered. Submission that since requisition requiring PW-4 Pote to remain present in the office of Anti Corruption Bureau is not on record, it is possible that PW-4 Pote was not present is equally devoid of substance. Presence of PW-4

Pote is proved by PW-1 Raosaheb and PW-6 PI Patil.

53. Ms. Khot submitted that a chit is said to have been recovered from the room. According to the prosecution, after the accused accepted the money, PW-1 Raosaheb told him to write a chit to the Talathi. The accused started writing the chit. After the raiding party entered the room this chit was seized along with other articles. Ms. Khot submitted that this chit should have been sent to the Chemical Analyser. There is nothing to indicate whether anthracene powder was found on it. Similarly, it is not clear whether anthracene powder was found on the bag. This according to Ms. Khot creates doubt on the credibility of the prosecution story.

54. There is no substance in this submission. Anthracene powder was found on the notes and on the hands of the accused. The numbers of the notes tallied with the numbers mentioned in the pre-trap panchnama. The prosecution story is therefore established to the hilt. So far as the chit and the bag are

concerned, assuming there is no evidence to establish that anthracene powder was found on them, that does not disprove the prosecution case. In any event, PW-1 Raosaheb and PW-4 Pote are consistent about the prosecution case that the accused was writing a chit to Talathi at the instance of PW-1 Raosaheb. There is a mention of this chit in the post-trap panchnama. PW-6 PI Patil has stated that anthracene powder was found on it and it was seized. Nothing more is required to establish this story.

55. In this connection, I may usefully refer to ***Sarupchand's case (supra)*** where currency notes containing phenolphthalein powder were given to the accused. Colour of solution of sodium carbide turned pink on dipping of fingers of the accused. The inner pocket of the coat in which the appellant had kept the said currency notes was also dipped in the said solution and it turned pink. No explanation was given by the accused why he received the money. The Supreme Court held that the Special Judge and the High Court had rightly believed the evidence adduced by the prosecution. In the present case also, the evidence relating to trap is totally

satisfactory and I have no reason to disbelieve it.

56. In ***Durga Dass's case (supra)***, money taken as illegal gratification was recovered from the pocket of the shirt of the accused. The accused contended that the notes were forcibly put in his pocket. The Supreme Court found the evidence of the Investigating Officer, the complainant and the panch witness to be sufficient to establish that currency notes were recovered from the pocket of the shirt of the accused. The Supreme Court did not accept the defence of the accused that money was thrust in his pocket.

57. In the present case also, the accused has failed to probabalise his defence. He has not led any evidence. Barring his word, there is nothing on record to probabalise his defence. In fact, the defence version to a large extent supports the prosecution. The accused has admitted that the mutation entry of the three brothers was pending before him. He has admitted that he interacted with PW-1 Raosaheb. But he has failed to

probabalise his defence that the money was thrust on him. The prosecution has proved its case beyond reasonable doubt.

58. In the circumstances, I am of the opinion that there is no substance in the appeal. The appeal is, therefore, dismissed. The impugned judgment and order of conviction and sentence is confirmed. The appellant - Mahadeo Yashwant Kamble is on bail. He shall surrender to jail. His bail bond stands cancelled. Needless to say that the appellant will be entitled to set off for the period of imprisonment if any, undergone by him.

[SMT. RANJANA DESAI, J.]